UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

Joseph Guglielmo,	:	Case No. 3:17-cv-6
	:	
Plaintiff,	:	**Judge Thomas M. Rose**
v.	:	
	:	**Magistrate Judge Sharon L. Ovington**
Montgomery County, Ohio et al.,	:	
	:	**PLAINTIFF'S REPLY TO**
Defendants.	:	**DEFENDANTS' MEMORANDUM IN**
	:	**OPPOSITION TO MOTION IN**
	:	**LIMINE TO EXCLUDE THE**
	:	**REPORT AND TESTIMONY OF**
	:	**CHARLES LANZIEREI (Doc. 167)**

Plaintiff seeks to exclude the report and testimony of radiologist Dr. Lanzieri because his

opinions are unfairly prejudicial because they will serve only to confuse the jury. First, it is still

not clear what the purpose of Dr. Lanzieri's opinions are. Dr. Lanzieri did not opine which

bleeding caused Mr. Guglielmo's damages; he only opines that multiple bleeding, as Defendants

put it, "could be a cause of Plaintiff's injuries" (RE 181, PageID# 5334) or "could have caused

symptoms at any time." (RE 181, PageID# 5335). Such possible causation testimony is not

relevant because possibilities are not admissible. *See Colon v. Abbott Labs.*, 397 F. Supp. 2d

405, 414 (E.D.N.Y. 2005) (medical causation testimony excluded when expert could only say

early exposure to cow's milk protein "may be" trigger for developing diabetes).

Defendants argue that Dr. Lanzieri opined that it is "just as probable that it was the older

brain bleed that could have been the cause." (RE 181, PageID#5335). However, Dr. Lanzieri

made no mention in his report that he had an opinion that an older brain bleed ***probably*** caused

Mr. Guglielmo's injury. All Dr. Lanzieri stated was "In summary, there is a left subdural

hematoma that contains blood of varying age as described above. Either of these collections

might have caused symptoms at any given time." (RE 167-1, PageID# 5228). This is not an opinion about the *probability* of the cause of Mr. Guglielmo's brain injuries.

Further, Dr. Lanzieri's opinion as to the age of the multiple brain bleeds is confusing and unhelpful to a jury. He reports that the readings on the one head CT scan that was taken hours after the beating at the jail "usually" showed various timeframes for the injury from "at least a week," "several hours or days but usually less than a week," "hours in age," and "months or even years to complete." Such opinions are useless to helping a jury determine the cause of Mr. Guglielmo's brain injuries and are therefore irrelevant. This court should exercise its gate-keeper function and keep out evidence that does not assist the trier of fact to understand a relevant issue. *Daubert v. Merrell Dow Pharmacuticals, Inc.*, 509 U.S. 579, 592 (1993).

Since Dr. Lanzieri's opinions are confusing and present merely possibilities of causation, Plaintiff respectfully requests that the Court grant Plaintiff's motion to exclude the report and testimony of Dr. Lanzierei.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2019 a copy of the foregoing pleading was filed

electronically. Notice of this filing will be sent to all parties for whom counsel has entered an

appearance by operation of the Court's electronic filing system. Parties may access this filing

through the Court's system. I further certify that a copy of the foregoing pleading and the Notice

of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has

not yet entered an appearance electronically.

<div style="text-align:right">

/s/Jennifer L. Branch
Attorney for Plaintiff

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